

**Prakash Chand vs. M/s.J.K.Industries Ltd. , Rajsamand.  
SB Civil 1<sup>st</sup> Appeal No.119/1987**

**Date of Judgment:**

**27th February, 2007.**

**PRESENT**

**HON'BLE MR.JUSTICE BHAGWATI PRASAD**

Mr.G.R.Bahari for Sanjay Mathur for the appellant/s.  
Mr.D.R.Bhandari for the respondent/s.

Heard learned counsel for the parties.

This is an appeal against the judgment and decree dated 10<sup>th</sup> July, 1987 in civil suit No.21/1982 whereby Additional District Judge, Rajsamand dismissed the suit.

The plaintiff appellant filed a suit for recovery of Rs.16,373/- on 28.08.1982 stating inter alia by consignment No.372 dated 28.08.1979. The defendant booked four drums of V.P.Latex, which was to be received by Mori & Company, Calcutta on payment of Rs.1,212/-, which reached Calcutta on 03.10.1979. Mori & Company, Calcutta was to take delivery of the goods from Jain Roadways , Calcutta but it did not take delivery. The plaintiff claimed Rs.1,212/- as Transport charges, Rs.1,651/- for Transportation Charges from Calcutta to Kankroli, Rs.12,000/- as

demurrages and total for Rs.16,373/- claimed decree.

Defendant company filed written statement on 13.08.1983 and admitted Company booked four drums of V.P. Latex but it is stated by letter dated 21.03.1980 that drums did not reach the destination further they enquired about the goods at Jain Roadways, Shanti Roadways and at Katariya Transport. The goods did not reach for six months and Latex became useless. It is stated that defendant never instructed and authorised plaintiff to re-book the goods. Rs. 1,212/- was to be received by plaintiff from Mori and Company , if goods were delivered in time. In any case, the defendant was not entitled to receive freight.

Six issues were framed by trial court on 19.11.1983 which reads as under:

or demurrages paid.

“1- क्या वादी ने कन्साइनमेन्ट सं0 372 का माल दिनांक 3/10/79 को कलकता पहुँचा दिया ?

2- क्या उक्त कन्साइनमेन्ट का माल जैन रोडवेज, कलकता के यहाँ काफी समय तक पड़ा रहा, किन्तु भरसक प्रयास के पर्यन्त भी प्रतिवादी अथवा मोरी एण्ड कम्पनी, कलकता ने माल नहीं छोड़ा और ना ही किराया और डेमरेज अदा किया ?- वादी

3- क्या वादी वाद पत्र की कलम नं. 5 में अंकित राशि 16373/- रुपये प्रतिवादी से प्राप्त करने का अधिकारी है ?

4- क्या माल वी0 पी0 लेटेक्स ऐसा रसायनिक तरल पदार्थ है कि जो इतने लम्बे समय में खराब व अनुपयोगी हो जाता है। इस कारण प्रतिवादी ने माल लेने से इन्कार कर दिया ?

5- अनुतोष क्या होगा ?”

The trial court decided issue No.2 in favour of plaintiff appellant and rest of issues are decided against the plaintiff appellant and in favour of defendant.

The plaintiff examined PW/1 Prakash Chand and defendants examined DW/1 Kailash Chand and DW/2 Arvind Kumar. The learned counsel for the plaintiff appellant assailed finding of issue No.1 and relied on Ex.4 to Ex.7 and stated that consignment had reached Calcutta. Ex.4 to Ex.7 are denied by defendant. The trial court has stated that there is no evidence on record whether contents of Ex.4 to 7 are correct or not. This finding has not been assailed.

Issue No.3 is an important issue, whether plaintiff is entitled for Rs.1,212/- as freight charges , Rs.1,651/- for re-loading and Rs.12,000/- as demurrages. Further, whether V.P.Latex is liquid chemical and after some time it becomes useless. The plaintiff has filed copy of bill which has not been admitted by defendant. The bill has not been proved and has not been exhibited. No time limit is

prescribed in bilty to deliver goods. In absence of any contract regarding time, the matter has to be looked into as per Section 46 of Contract Act, which stands within reasonable time. What is a reasonable time will have to be looked in the facts of particular case. The normal or usual time will alone be the relevant criteria. This test has to be taken into consideration for finding out prima facie reasonable time which would be taken in transit. PW/2 who is Superintendent in technical Department of J.K. Industries has deposed that V.P.Latex is synthetic rubber. Latex is used for manufacture of tyre. The latex is useful only for 6 months after that it is a waste and useless. The plaintiff has failed to prove that goods reached the destination in reasonable time.

So far as claim of Rs.1,651/- as freight charges of return of goods are concerned, the plaintiff is not entitled for it, as the plaintiff himself has deposed that J.K. Industries did not instruct him to bring back the goods from Calcutta to Kankroli.

Thus, so far as demurrages and freight charges are concerned, plaintiff is not entitled for it because in contract plaintiff's role is of bailee and that of defendant is of bailor and their rights are governed as per Section 170 of the Contract Act. In absence of contract to contrary, the plaintiff can retain the goods

until he receives the remuneration for services he has rendered. The plaintiff has relied on Section 70 of the Act which is not applicable. The finding requires no interference.

In the circumstances, the appeal has no force and liable to be dismissed.

**( BHAGWATI PRASAD), J.**

L.George